

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3021 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SURESHBHAI RAGHUNATHBHAI NAVALE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3021 of 2004
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
Ms Mita Panchal, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 15.8.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that a First Information Report was registered against the petitioner before Athwa Police Station C.R. No.199/2003 on 5.8.2003 for offences punishable under sections 65,66 and 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two unnamed witnesses have rendered statements against the petitioner and their names were not disclosed to the petitioner. On the strength of the aforesaid solitary registered offence and also on the basis of the aforesaid statements of the two witnesses, the petitioner was found to be a bootlegger and with a view to prevent him from carrying on his bootlegging activities leading to a threat to public order or public health, the petitioner was ordered to be detained by order dated 15.8.2003 by the Commissioner of Police, Surat.

3. Feeling aggrieved by the said order of detention, the petitioner has preferred this petition before this Court. It has been contended here that simply because a solitary prohibition offence has been registered against the petitioner, it would not be a valid ground for detaining the petitioner. That when names of the witnesses have not been disclosed to the petitioner and therefore, the petitioner could not submit effective representation against the detention and, therefore, the petitioner's constitutional right guaranteed under Article 22 (5) of the Constitution of India has been defeated. That therefore, the order of detention is illegal and deserves to be set aside.

4. On receiving the petition, rule was issued and on receipt of the notice of rule Ms. Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and perused the papers.

5. During the course of hearing, learned Advocate for the petitioner has argued that two other co-accused persons were also involved in the aforesaid offence and the statements of witnesses recorded by the detaining authority in the present matter have also referred names of the said two persons. He has also contended that

those two co-accused and co-detenus had also filed Special Civil Application No.14922/2003 and 16045/2003 respectively. That this Court dealt with and decided those petitions on 27.11.2003 and 26.2.2004 respectively. That by the aforesaid judgments and orders of this Court, petitions of those two detenus were allowed and the orders of detention against them were quashed and set aside. On going through the judgment of the said matters, it appears that the case of the present petitioner is on par with the case of those two detenus. When the said two detenus have been released after quashing and setting aside the detention orders against them, then on the principles of parity, the present petitioner is also required to be allowed and the order of detention against the present petitioner is also required to be set aside. Copies of the judgments submitted by the learned Advocate for the petitioner are taken on record.

6. For the foregoing reasons, this petition is allowed. The impugned order dated 15.8.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msh